

To: Mr Nayeemul Islam
Shirley Spice
363 Stratford Road
Shirley, B90 3BW



Ref: RS/SRU157155
Date: 18` January 2020

DIRECTION (INDIVIDUAL PREMISES)

THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ENGLAND) (NO. 3) REGULATIONS 2020 (No.2020/750)¹, REGULATION 4(1)

1. Solihull Council (“the Authority”), in exercise of the powers conferred by regulation 4(1) of the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020² (“the No. 3 Regulations”), gives the following direction.
2. The Authority considers that the following conditions are met—
 - a. this direction responds to a serious and imminent threat to public health;
 - b. this direction is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the Authority’s area; and
 - c. the prohibitions, requirements or restrictions imposed by this direction are a proportionate means of achieving that purpose.³
3. Before giving this Direction, the Authority has had regard to—
 - a. any advice given to it by its Director of Public Health; and
 - b. the need to ensure that members of the public have access to essential public services and goods (including whether the individual premises forms part of essential infrastructure).

¹ SI 2020/750 accessed at <https://www.legislation.gov.uk/uksi/2020/750/contents/made>; guidance on local authority powers at: <https://www.gov.uk/government/publications/local-authority-powers-to-impose-restrictions-under-coronavirus-regulations/local-authority-powers-to-impose-restrictions-health-protection-coronavirus-restrictions-england-no3-regulations-2020>

² In this Direction, any reference to a regulation is a reference to a regulation of the Health Protection (Coronavirus Restriction) (No. 3) (England) 2020 (S.I. 2020/750).

³ See regulation 2(1).

4. The Authority has taken reasonable steps to give advance notice of this direction to the owner and persons carrying on/managing a business from the premises to which the direction relates.

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Person and premises

5. This Direction is given to you as the owner/ occupier of the premises to which the direction relates.
6. This Direction is given in respect of Shirley Spice, 393 Stratford Road, Shirley, Solihull, B90 3BW (“the Premises”).

Directed actions

7. This Direction requires the Closure of the Premises to staff and customers.

Timing and duration of direction

8. The restrictions set out in paragraph 7 come into effect at 21:00 on 18 January 2021. The restrictions set out in paragraph 7 shall have effect until 15 February 2021 or (if sooner) until such time as the owner/occupier has demonstrated to the Authority’s satisfaction that an appropriate risk assessment and associated arrangements are in place to meet the requirements of the current Covid-19 regulations and guidance.
9. In accordance with Regulation 2(2)(b) of the No. 3 Regulations, the Authority will review this Direction at least once every seven days. If the Authority considers that one or more of the conditions in regulation 2(1) (set out in paragraph 2 above) are no longer met in relation to the Direction, it will either be revoked without replacement or revoked and replaced with another direction.

Grounds for Direction

10. This Direction is given on the basis that:
 - The owner has purposely and consciously chosen to serve alcohol to customers on the premises whilst he is prohibited in law from doing so.
 - The owner appeared to consider that he was operating within the law when serving alcohol to customers.
 - The business employs 7 people and there was no written Covid-19 risk assessment available to inspect or consider.
 - While there were notices in the premises relating to Covid 19, hand sanitiser was available and the staff were wearing masks, the owner demonstrated no knowledge of Covid risk assessments nor did he appear to have any knowledge of the gov.uk guidance for premises.

- Some of the notices entitled “Covid Safety Act” were in fact a list of food safety mitigating factors.
- The owner consistently had to be asked to wear his mask covering his nose as well as his mouth.
- The lack of understanding demonstrated by the owner along with the lack of a Covid risk assessment indicated a lack of a coherent strategy for managing the Covid risk in the premises.

Consequences of not meeting the requirements of the Direction

11. There may be consequences if this Direction is not complied with. For example, the Authority may issue a Prohibition Notice⁴ or Fixed Penalty Notice⁵ against you or may commence criminal proceedings against you.

12. A person commits an offence if, without reasonable excuse, the person:⁶

- contravenes a direction under regulation 4(1); or
- obstructs a person carrying out a function under the No. 3 Regulations, including any local authority designated officer under regulation 12 or a constable.

Such an offence is punishable on summary conviction by an unlimited fine.

Appeal/representations

13. If you believe that this Direction should not have been issued, and/or it contains incorrect information, please inform the specified point of contact set out below, setting out your reason(s).

14. You have a right to appeal against this Direction to a magistrates’ court by way of complaint for an order.⁷ There is a time limit of **up to six months from the date of issue of this Direction to appeal to the Magistrates’ Court**. However, bear in mind that this Direction will be reviewed by the Authority at least every seven days and it will decide whether to revoke this Direction or revoke and replace it with another direction.⁸

15. You also have the right to make representations to the Secretary of State about this Direction.⁹ The Secretary of State must consider any such representations

⁴ See regulation 12(2) of the No. 3 Regulations.

⁵ See regulation 14(1) of the No. 3 Regulations

⁶ See regulation 13(1) of the No. 3 Regulations.

⁷ See regulation 4(9)(a) of the No. 3 Regulations.

⁸ If this direction was made pursuant to a direction of the Secretary of State under regulation 3 of the No 3 Regulations, a summons is to be issued to both the Secretary of State and the local authority.

⁹ See regulation 4(9)(b) of the No. 3 Regulations.

as soon as is reasonably practicable, and decide whether it would be appropriate to exercise the Secretary of State's powers set out in regulation 3 of the No. 3 Regulations. The Secretary of State may direct the Authority to revoke this Direction, or revoke and replace this Direction. The Secretary of State must provide written reasons for the decision to the person who made the representations and to the Authority.

16. In making any representations to the Secretary of State about this Direction, the recipient of the Direction should do this via NHS Test and Trace, with representations emailed to directionnotification@dhsc.gov.uk. This should include:

- a. The name of the Authority;
- b. An explanation as to how you have been impacted by the Direction and their relationship to the premises, such as whether you are the owner, occupier or involved in managing entry into, or departure from, the Premises, as set out in Regulation 4(5) of the No.3 Regulations;
- c. An explanation of the basis upon which the Direction should not have been made and was or is not appropriate, with reference to the conditions set out in Regulation 2(1) / paragraph 2 of this Direction;
- d. Any evidence which supports this contention; and
- e. What action you would like to be taken.

17. You are still required to comply with this direction pending the outcome of any appeal to the magistrates' court or the Secretary of State.

18. You may wish to obtain independent legal advice should you seek to pursue an appeal.

Additional powers and requirements that accompany this Direction

Publication

19. This Direction (and notice of revocation of this direction) is published on the Authority's website as required by the No. 3 Regulations.¹⁰

Notification

20. The Authority is required to notify any district council within its area and any local authority whose area is adjacent to the initiating authority's area of this Direction (and any revocation of the Direction) by the No. 3 Regulations¹¹.

¹⁰ See Regulation 10(2)(a) of the No. 3 Regulations.

¹¹ See Regulation 11(1)(a) – (d) of the No. 3 Regulations

21. The Authority is required to notify the Secretary of State as soon as reasonably practicable after the Direction is given.

Specified point of contact:

email: legal@solihull.gov.uk

Post: Legal Services, Council House, Solihull, B91 9QS

Authorised by

A handwritten signature in black ink, appearing to read 'ACyL', with a long horizontal flourish extending to the right.

Andrew Callingham, Head of Safer Communities, Solihull MBC